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Supreme Court, U.S.
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No. 94-502

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

MARWAN AFANEH, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY TO MEMORANDUM IN OPPOSITION

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The Memorandum in Opposition filed by Respondent contends that the issue presented in the herein Petition for a Writ of Certiorari is presently not ripe for review.

Respondent argues that the decision of the Court of Appeals, in reversing an Order suppressing statements obtained following an unlawful arrest, places Petitioner in precisely the same position he would have occupied if the district court denied his motion to suppress.

Accordingly, Respondent contends that review by this Court of the decision entered by the court of appeals would be premature as an acquittal of Petitioner would render his contentions to be moot; and, a conviction of Petitioner would allow him to present his contentions to this Court if affirmed on appeal.

The arguments presented by Respondent are without merit.

Section 1254(1) of Title 28 of the United States Code provides that decisions entered in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. The general language of this provision was intended by Congress to vest in the Supreme Court a comprehensive and unlimited power over every case pending in a court of appeals unaffected by the condition of the case as it exists in that court.

The issue presented in the herein petition for a writ of certiorari is ripe for review. The issue concerns the illegality of Petitioner's arrest and the admissibility of statements obtained from Petitioner immediately following his unlawful arrest. All available evidence concerning this issue was presented in a hearing conducted in the district court.

The district court and the three (3) judge panel on the court of appeals all unanimously found that the arrest of Petitioner was, in fact, unlawful and without probable cause.

The majority decision of the court of appeals, over dissent, reversed the decision of the district court and found the admission of statements obtained following an unlawful arrest to be proper under this Court's decision in Michigan v. Summers, 452 U.S. 692 (1981). (Pet.App.A1-11; A12-18).

Accordingly, the majority opinion of the court of appeals has construed this Court's decision in Michigan v. Summers, supra, to reward official misconduct which is inconsistent with prior decisions of this Court and other circuit courts of appeal, as this Court and other circuit courts have never held that statements obtained as a direct result of an unlawful arrest can be introduced by the prosecution at time of trial.

Respondent's argument that Petitioner should first proceed to trial and risk conviction on the basis of evidence produced as a direct result of an unlawful arrest without probable cause, in violation of Petitioner's Fourth Amendment rights, is contrary to the purpose and policy of law set forth for immediate review under 28 U.S.C. §1254(1).

This case presents an issue of exceptional importance effecting fundamental rights of all citizens which the majority opinion of the Court of Appeals has decided in a manner inconsistent with prior decisions of the Supreme Court and other circuit courts of appeals.

Accordingly, Petitioner, **MARWAN AFANEH**, prays this Honorable Court assets its jurisdiction and hear this case on its merits.

Respectfully submitted,

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